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9 Attorneys for Defendant
10 and Third Party Plaintiff
11 Stark Investment Company

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PALMTREE ACQUISITION
CORPORATION, a Delaware corporation,

Plaintiff,

vs.

MICHAEL R. NEELY, an individual, PERRY
J. NEELY, an individual; GARY NEELY, an
individual; MICHAEL R. NEELY, PERRY J.
NEELY and GARY NEELY dba MIKE'S ONE
HOUR CLEANERS; CHARLES FREDERICK
HARTZ dba PAUL'S SPARKLE CLEANERS;
CHARLES F. HARTZ, an individual;
MULTIMATIC CORPORATION, a New
Jersey corporation; WESTERN STATES
DESIGN, a California corporation;
MCCORDUCK PROPERTIES LIVERMORE,
LLC, a Delaware limited liability company
individually and as the successor to JOHN
MCCORDUCK, KATHLEEN MCCORDUCK,
PAMELA MCCORDUCK, SANDRA
MCCORDUCK MARONA, and IMA
FINANCIAL CORPORATION, a California
corporation; STARK INVESTMENT
COMPANY, a California general partnership;
GRUBB & ELLIS REALTY INCOME
TRUST, LIQUIDATING TRUST, a California
trust; and DOES 1-20, inclusive,

Defendants.

Case No. 08-CV-3168-EMC

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT ; ORDER**

Hon. Edward M. Chen

Date: July 20, 2012
Time: 9:00 a.m.
Courtroom: 5, 17th floor

1 THE KIRRBERG CORPORATION, formerly
2 known as MULTIMATIC CORPORATION, a
3 New Jersey corporation; and STARK
INVESTMENT COMPANY, L.P., a California
limited partnership,

4 | Third Party Plaintiffs,

5 | v.

6 DOROTHY ANDERSON, Trustee of The
7 Anderson Marital Trust, dated February 28,
8 1979, as amended and restated August 31, 1994;
9 and DOROTHY ANDERSON, Trustee of The
Anderson Tax Deferral Trust, dated February
28, 1979, as amended and restated August 31,
1994.

10 Third Party Defendants.

11 The parties who have appeared in the above-captioned environmental action have met and
12 conferred and except for Western States Design, jointly submit the following Joint Case
13 Management Conference Statement.

14 1. Date case was filed: This case was filed on July 1, 2008. The Second Amended
15 Complaint was filed on July 14, 2011 and the Fourth Amended Third Party Complaint was filed on
16 August 24, 2011.

17 2. List or description of all parties: The parties to this case are as follows:

18 a. Plaintiff Palmtree Acquisition Corporation, former owner of the Livermore
19 Arcade Shopping Center (“LASC”), one of two shopping centers comprising the subject property;
20 b. Defendant and Third Party Plaintiff Stark Investment Company, former owner
21 of the LASC and Miller’s Outpost Shopping Center (“MOSC”), the second shopping center
22 comprising the subject property;

23 c. Defendant and Third Party Plaintiff The Kirberg Corporation fka Multimatic
24 Corporation, manufacturer of the dry cleaning machine at the LASC;

25 d. Defendants Michael R. Neely, Perry J. Neely and Gary Neely, individually and
26 dba Mike's One Hour Cleaners, the dry cleaning operator at the LASC;

27 e. Defendant Charles Hartz, individually and dba Paul's Sparkle Cleaners, the dry
28 cleaning operator at the MOSC;

1 f. Defendant Western States Design, distributor of the dry cleaning machine at the
 2 LASC;
 3 g. Defendant McCorduck Properties Livermore, LLC, current owner of the MOSC;
 4 h. Defendants John McCorduck, Kathleen McCorduck, Pamela McCorduck and
 5 Sandra McCorduck Marona are former owners of the MOSC;
 6 i. Defendant IMA Financial Corporation, former owner of the MOSC; and
 7 j. Third Party Defendant Dorothy Anderson, Trustee of The Anderson Marital
 8 Trust, dated February 28, 1979, as amended and restated August 31, 1994 and The Anderson Tax
 9 Deferral Trust, dated February 28, 1979, as amended and restated August 31, 1994, current owners
 10 of the LASC.

11 3. Summary of all claims, counter-claims, cross-claims, third party claims:

12 a. Plaintiff claims (1) contribution under CERCLA Sections 107(a) and (e)(2), 42
 13 U.S.C. §§ 9607(a) and (e)(2), against all Defendants; (2) Declaratory Relief under CERCLA
 14 against all Defendants; (3) Continuing Public Nuisance against all Defendants; (4) Negligence
 15 against Defendants Neelys, Multimatic and Western States Design; (5) Equitable Indemnity against
 16 all Defendants; and (6) Declaratory Relief under state law against all Defendants.

17 b. Third Party Plaintiffs claim (1) costs under CERCLA Sections 107(a) and (e)(2),
 18 42 U.S.C. §§ 9607(a) and (e)(2); (2) Declaratory Relief under CERCLA; (3) Equitable Indemnity;
 19 and (4) Declaratory Relief under state law against all Third Party Defendants.

20 4. Brief description of the event underlying the action: This action is a “re-opener” of a
 21 prior action that was conditionally settled. The prior action was filed on February 3, 1993 in the
 22 United States District Court for the Northern District of California and entitled *Grubb & Ellis*
 23 *Realty Income Trust, Liquidating Trust v. Catellus Development Corp., et al.*, and related cross-
 24 actions, Case No. C93-0383 SBA (“Prior Action”). The Prior Action concerned the alleged release
 25 of dry cleaning solvent perchloroethylene (“PCE”) from the dry cleaning establishments at the
 26 LASC and MOSC in Livermore, California. The California Regional Water Quality Control Board
 27 (“RWQCB”) had issued an Order to the potentially responsible parties consisting of dry cleaning
 28 operators and property owners to remediate the soil and groundwater impacted by PCE

1 contamination from the centers. Following settlement of the Prior Action, certain parties
 2 requested, and the RWQCB granted, the establishment of a Containment Zone with a Contingency
 3 Plan and the RWQCB issued a new order in 1996 to that effect. However, on March 17, 2008 and
 4 March 21, 2008, the RWQCB issued Directives requiring further investigation and monitoring of
 5 the PCE contamination, which also potentially impacted the deeper aquifer, thereby allegedly
 6 triggering the “re-opener” provision in the settlement agreement. Plaintiff Palmtree Acquisition
 7 Corporation thereafter filed this action on July 1, 2008, seeking contribution under CERCLA and
 8 damages pursuant to the “re-opener” provision, among other claims.

9 5. Description of relief sought and damages claimed with an explanation as to how
 10 damages are computed: The parties seek both declaratory and monetary relief through the Second
 11 Amended Complaint, the Fourth Amended Third Party Complaint and various cross-claims and
 12 counter-claims which were deemed filed pursuant to Stipulations and Orders filed on August 3,
 13 2011, October 27, 2011 and November 14, 2011. The parties seek reimbursement and contribution
 14 of the amounts spent thus far on investigative costs (over \$1,000,000) as well as an allocation of
 15 future investigative costs and remedial measures (to be determined) under CERCLA. The parties
 16 also seek monetary damages for nuisance and negligence.

17 6. Status of discovery (including any limits or cutoff dates): Since September 2008,
 18 discovery has been stayed, including initial disclosures, so that the parties could engage in
 19 mediation. These parties have been mediating this matter with Timothy Gallagher, Esq., along
 20 with other potentially responsible parties, and are continuing to do so, while simultaneously
 21 working cooperatively as a group to respond to the RWQCB’s directives and requirements.
 22 Indeed, Plaintiff and Defendants, with the exception of Grubb & Ellis Realty Income Trust,
 23 Liquidating Trust, have thus far spent over \$1,000,000 since March 2008 in their response efforts,
 24 including jointly hiring a project manager and technical consultant; directing investigative
 25 measures and submitting a final technical investigative report; submitting a work plan, directing
 26 work thereunder and submitting a remedial investigation report with technical findings and
 27 proposed remedial alternatives; and coordinating among the various regulatory agencies. The
 28 RWQCB has reviewed the remedial investigation report and the responding parties have hired a

1 contractor to prepare and submit the remedial action plan. Negotiations are under way between the
2 responding parties and contractor for the implementation of the remedial action plan. The parties
3 are very close to finalizing a settlement among them and are hopeful that a settlement can be
4 finalized during the third quarter of this year. The parties would like to continue working
5 cooperatively towards resolution of this matter and thus propose that the discovery stay be
6 continued.

7. Procedural history of the case including previous motions decided and/or submitted,
8 ADR proceedings or settlement conferences scheduled or concluded, appellate proceedings
9 pending or concluded, and any previous referral to a magistrate judge: As described above, the
10 parties have been mediating among themselves before Timothy Gallagher, Esq. This case was
11 initially referred to Magistrate Judge Chen but then transferred to Judge Patel on April 2, 2010 and
12 then reassigned to Judge Chen on June 6, 2011. Motions previously decided in this case consist
13 of:

14 a. Application for good faith settlement determination by Plaintiff Palmtree
15 Acquisition Corporation and Defendant Northrop Grumman Systems Corporation, granted October
16 4, 2010.

17 b. Motion to dismiss the First Amended Third Party Complaint by Third Party
18 Defendant Melinda Evers, Successor Trustee of the Harold A. Ellis, Jr. Revocable Inter Vivos
19 Trust, granted without prejudice on October 4, 2010.

20 c. Motion to dismiss the Second Amended Third Party by Third Party
21 Defendant Melinda Evers, Successor Trustee of the Harold A. Ellis, Jr. Revocable Inter Vivos
22 Trust, granted with prejudice on February 11, 2011.

23 d. Motion to dismiss one cause of action from the Third Amended Third Party
24 Complaint, or in the alternative, for a more definite statement by Third Party Defendant Dorothy
25 Anderson, granted without prejudice on August 4, 2011.

26 e. Motion to dismiss the Fourth Amended Third Party Complaint by Third
27 Party Defendant Dorothy Anderson, denied on October 24, 2011.

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8. Other deadlines in place (before reassignment), including those for dispositive motions, pretrial conferences, and trials: None.

9. Any requested modification of these dates and reason for the request: None.

10. Whether the parties will consent to a magistrate judge for trial: The parties to this Joint Case Management Conference Statement do not consent to a magistrate judge for trial.

11. Whether Judge Chen has previously conducted a settlement conference in this case, and if so, whether the parties stipulate to him handling this case for trial pursuant to ADR Local Rule 7-2 or request his recusal: Judge Chen has not previously conducted a settlement conference in this case.

12. If there exists an immediate need for a case management conference to be scheduled in the action: The parties believe that substantial progress has been made and is still being made to amicably resolve this matter through mediation. The parties hope to finalize the settlement by the third quarter of this year and the parties will apply to the Court for a good faith settlement determination.

There is no immediate need for a case management conference to be scheduled. The parties propose the scheduling of a further case management conference in six months, in December 2012, so that they may continue with mediation efforts and finalize a settlement.

DATED: July 13, 2012

GONSALVES & KOZACHENKO

By: /s/ Selena P. Ontiveros
Selena P. Ontiveros

Attorneys for Defendant & Third Party
Plaintiff Stark Investment Company, a
California limited partnership

DATED: July 13, 2012

The Costa Law Firm

By: /s/ Daniel P. Costa
Daniel P. Costa

Attorneys for Defendant & Third Party
Plaintiff Stark Investment Company, a
California limited partnership

1 DATED: July 13, 2012

Cox, Castle & Nicholson, LLP

2 By: /s/ Stuart I. Block
3 Stuart I. Block

4 Attorneys for Plaintiff Palmtree Acquisition
5 Corporation, a Delaware corporation f/k/a
6 Catellus Development Corporation

7 DATED: July 13, 2012

BASSI, EDLIN, HUIE & BLUM LLP

8 By: /s/ Noel Edlin
9 Noel Edlin

10 Attorneys for Defendants Michael R. Neely,
11 Perry J. Neely, and Gary Neely, dba Mike's
12 One Hour Cleaners

13 DATED: July 13, 2012

Dongell Lawrence Finney, LLP

14 By: /s/ Thomas A. Vandenberg
15 Thomas A. Vandenberg

16 Attorneys for Defendant & Third Party
17 Plaintiff The Kirrberg Corporation f/k/a
18 Multimatic Corporation

19 DATED: July 13, 2012

Rogers Joseph O'Donnell

20 By: /s/ D. Kevin Shipp
21 D. Kevin Shipp

22 Attorneys for Defendant Charles Frederick
23 Hartz, dba Paul's Sparkle Cleaners

24 DATED: July 13, 2012

Gordon, Watrous, Ryan, Langley, Bruno &
25 Paltenghi

26 By: /s/ Bruce C. Paltenghi
27 Bruce C. Paltenghi

28 Attorneys for Defendant McCorduck
Properties Livermore, LLC, a Delaware
limited liability company; John McCorduck;
Kathleen McCorduck; Pamela McCorduck;
and Sandra McCorduck Marona

1 DATED: July 13, 2012 Castellon & Funderburk LLP
2 By: /s/ Ruben A. Castellon
3 Ruben A. Castellon
4 Attorneys for Defendant McCorduck
5 Properties Livermore, LLC, a Delaware
6 limited liability company
7
8 DATED: July 13, 2012 Stanzler Law Group
9 By: /s/ Jordan S. Stanzler
10 Jordan S. Stanzler
11 Attorneys for Defendant IMA Financial
12 Corporation, a California corporation
13
14 DATED: July 13, 2012 Paladin Law Group LLP
15 By: /s/ Brian R. Paget
16 Brian R. Paget
17 Attorneys for Third Party Defendant Dorothy
18 Anderson, Trustee of the Anderson Marital
19 Trust and The Anderson Tax Deferral Trust

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21 IT IS SO ORDERED that the CMC is reset from 7/20/12 to 12/14/12 at 9:00 a.m. A joint
22 CMC Statement shall be filed by 12/7/12.
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Edward M. Chen
U.S. District Judge

